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A Look at Legal Education: The Globalization of American Legal Education

JAMES P. WHITE*

INTRODUCTION

On behalf of the American Bar Association's (ABA) Out of the Box Committee on Legal Education, I would like to thank Chief Justice Shepard for inviting me to participate in this symposium. The genesis for the creation of the Out of the Box Committee came from a program in the Section of Legal Education and Admissions to the Bar at the ABA annual meeting, held in London in July of 2000. At that meeting the Section's presentation was entitled: "*Out of the Box*" *Thinking About the Training of Lawyers in the Next Millennium*.¹ It is my pleasure to report some of the committee's work to the Conference of Chief Justices. Specifically, this presentation will address three main areas of concern regarding globalization: Summer Abroad Programs, Joint Agreements between International Law Schools, and Cross-Border Practice.

First, to help set the proper scene I would like to share excerpts of the annual meeting's keynote address. The speaker was John E. Sexton, then Dean of New York University School of Law, and now President of New York University. Dean Sexton at the outset of his address stated:

Two months ago, the Association of American Law Schools convened 48 legal educators from six continents to discuss legal education. The participants, each an academic leader in his or her country, represented an elite sector of the law school world. Nonetheless, the description of schools and curricula provided by participants displays an astonishing variety of form: the smallest school has 40 students, the largest over 40,000; some accept students after secondary school, others only after a university education; some operate under regulatory schemes that govern the degree-granting process, others in a *laissez-faire* environment; some qualify their graduates *ipso facto* for law practice, others (as in the case in the United States) provide only a predicate for a competency exam, which in turn qualifies successful candidates for law practice, and still others operate without regard for competency exams.

Given the extraordinary collage presented in Florence by elite academics, it is difficult to imagine the picture that would emerge from a conference that brought together representatives of every element of legal education—especially if the words "legal education" were taken to include all who teach about the law (whether in what we would call law schools, or continuing legal education classes, or certificate programs, or paralegal training).

The extraordinary variety found in legal education is reflected in law practice, whether viewed narrowly from an American perspective or more broadly from a global one.²

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1. John E. Sexton, "*Out of the Box*" *Thinking About the Training of Lawyers in the Next Millennium*, 33 U. TOL. L. REV. 189 (2001).

2. *Id.* at 189.

Later in Dean Sexton's address, he turned to the issue of globalization:

The first, and perhaps most important, trend worth noting is globalization. At the broadest level, we can be certain that over the next century the world will become smaller and increasingly interdependent; we can be sure that law will provide the basis of economic interdependence and the foundation of human rights. The rule of law will permeate an emerging global village, touching societies it never has touched. And, importantly, the success of this new community will depend in large part upon the integration and accommodation of disparate traditions through law.

There are many levels at which globalization and legal education intersect. Since our graduates will practice in a globalized world, they will have to know how the reality of globalization affects the way legal rules operate, and they must develop a set of techniques for mediating within a much more complex sovereign system.

Still more to our point, the process of globalization is bound to raise questions about the unusual structure of American legal education. For example, today clients are represented in the same transaction by lawyers from American law firms who are graduates of American law schools and by lawyers from European firms who are products of a much more typical legal education, consisting of five years of education after secondary school. These clients report that the American trained lawyers and those trained elsewhere bring comparable skills to the table. This observation, if true, will become more palpable as the American and European firms begin to hire lawyers from each other's pools—and these lawyers begin to practice side by side as associates and partners. Ultimately, this assimilation will beg the question: Is value added by the extra years of training (and the extra cost) invested by the products of the American legal system?³

Addressing globalization in law school curriculums, Dean Sexton stated:

We should look first at the phenomenon of globalization. Clearly, as I said earlier, our graduates must master the techniques of dealing with law in the context of globalization; so, this adds an element to the curriculum spectrum I am outlining. I mean here to go farther, however—to highlight the opportunity globalization presents us to think about law and the role of lawyers in a way that expands the skill set of our students and connects to the special role for lawyers that animates an American legal education.

American law and its lawyers already are playing a pivotal role in the unfolding process of globalization. The United States has developed the world's most elaborate legal system; our Constitution is an important model for compacts governing the relationship of governments to their citizens; and American commercial law is providing a reference point as others develop their own . . .⁴

Taking Dean Sexton's speech to heart, the Out of the Box Committee focuses on some issues that are quite familiar to American law schools. Perhaps, these issues take on a new light when viewed with an eye toward globalization. It is with this globalization mindset that I wish to present the following issues and thoughts.

3. *Id.* at 191.

4. *Id.* at 198.

I. SUMMER ABROAD PROGRAMS

In observing the globalization of the legal profession, it is useful to review the globalization of American legal education. In the summer of 1975, five ABA-approved law schools offered a summer program abroad. During the 1976–1977 academic year the Accreditation Committee received notice about several new programs to be offered during the summer of 1977. One in particular caught the attention of the Accreditation Committee. It was to be a program given by an ABA-approved law school onboard a cruise ship. The faculty was from an unaccredited law school, excessive credit was given for the period of the program, and there were no library or study facilities available to the students. The Accreditation Committee informed the school that it was not a program for which academic credit could be awarded. The Committee determined that the school had not made a timely report to the consultant, which should have analyzed the effect of this off-campus program and its compliance with the standards.

The Accreditation Committee observed that there were several new summer programs abroad, which had not been reviewed by the Accreditation Committee or Council, being offered in the summer of 1977 by ABA-approved law schools. Members of the Accreditation Committee expressed concern that some of these programs appeared to make misleading advertisements, for example, suggesting that a program was affiliated with a foreign law school. In fact, the ABA-approved law schools were only renting space in the foreign law school, using only American faculty, and had a program of study with no comparative or international component.

The Accreditation Committee directed the consultant to send a memorandum to the deans of all ABA-approved law schools. This memorandum stated that the Council had requested that the Accreditation Committee inquire into the matter of schools having off-campus summer programs and their compliance with the *Standards and Rule V of the Rules of Procedure for the Approval of Law Schools by the American Bar Association*. The following question was raised: Did the establishment of foreign summer programs constitute a change in structure that would require action, review, or approval by the Accreditation Committee?

Suffice it to report that in the past thirty years summer abroad programs conducted by American law schools have burgeoned. In the summer of 2006, 120 ABA-accredited law schools offered approximately 160 programs. The criteria for approving these programs require that the program's academic offering must be substantially related to the socioeconomic environment of the host country, and have an international- or comparative-law focus. At this juncture, two points are clear: (1) summer abroad programs, when properly accredited, provide an invaluable experience for American law students to experience a foreign law environment; and (2) summer abroad programs may be seen as being an effect of globalization in the legal profession.

II. DUAL-DEGREE OFFERINGS WITH INTERNATIONAL LAW SCHOOLS

Another global legal education development is the dual-degree program offered by an American and a foreign law school. Two examples in America are the programs

offered at Cornell University⁵ and Columbia University,⁶ while examples at foreign law schools are the programs at the Université de Paris I Panthéon-Sorbonne, the Universidad de Puerto Rico, and the Universitat de Barcelona.

For example, in the Universidad de Puerto Rico program, dual degrees are awarded as they are in the Cornell and Columbia programs. Upon successful completion of the program, a Juris Doctor degree is awarded by the Universidad de Puerto Rico, and a *Licenciatura* is awarded by the Universitat de Barcelona. The program requires four years of study by students at the Universidad de Puerto Rico—three years in Puerto Rico and one in Barcelona. In contrast, students of the Universitat de Barcelona must study for five years—four years in Barcelona and one year in Puerto Rico.

The purpose behind the dual-degree programs is nicely summarized by Dean Mary Daly of St. John's University School of Law, an Out of the Box Committee member:

Globalization directly affects the food we eat, the interest rates we pay, the products we buy, the employees we hire and the personal information we lose to cyber thieves who steal our identities. The civil and criminal laws in the United States regulate most aspects of public and private behavior. It is difficult to imagine conduct, either personal or organizational, that escapes their reach.

Given the inescapable march of globalization and the pervasiveness with which the law permeates the U.S. society, law schools have a unique obligation to prepare their graduates to practice in a global environment.⁷

Simply put, partnerships with foreign law schools that encourage students to experience law in a global perspective enrich the profession as a whole.

Dual-degree programs are not the only way American and foreign law schools interact. In 1990, the American Bar Association began the Central and Eastern European Law Initiative (CEELI), which reaches out to the newly free countries of Central and Eastern Europe, and ultimately the countries of the former Soviet Union.⁸

5. The Cornell program partners with three international universities: the Université de Paris I Panthéon-Sorbonne, Humboldt Universität zu Berlin, and the Institut d'Études Politiques de Paris. For further information on the program, see Cornell University Law School, Dual Degrees, http://www.lawschool.cornell.edu/admissions/degrees/dual_degree.cfm (last visited Mar. 23, 2007).

6. The Columbia program partners with three international universities: the Université de Paris I Panthéon-Sorbonne, the University of London, and the University of Frankfurt. For more information on the program, see Columbia Law: Foreign Double Degree Programs, http://www.law.columbia.edu/center_program/intl_progs/Double_degrees?#rtregion:main (last visited Mar. 23, 2007).

7. Mary C. Daly, *Law Schools Shameful Neglect of the Transformative Effect of Globalization on the Practice of Law 1* (Out of the Box Comm., Paper, 2006) (on file with author).

8. The stated mission of the CEELI is as follows:

The Central European and Eurasian Law Initiative (CEELI)—a public service project of the American Bar Association (ABA)—advances the rule of law by supporting the law reform process in Central and Eastern Europe, Eurasia and the Middle East.

Through its volunteer legal liaison program as well as its training institute in Prague, CEELI makes available American and European legal expertise and

In this program American law schools are linked with law schools in these newly emerging democracies.⁹ We have now extended the program to Africa, Latin America, and Asia. These pairings of domestic and foreign law schools allow for a free exchange of ideas on how to best approach the globalization of the profession.

Partnerships with foreign law schools have stimulated new courses in both comparative and international law in American law schools. Also, comparative law is now a prevalent topic in many of the traditional American law school courses, a phenomenon that has only taken place in the last fifteen years. These partnerships have made law schools much more cognizant of the globalization of legal practice.

III. CROSS-BORDER PRACTICE

With the globalization of legal practice there is increasing pressure to permit cross-border practice—allowing attorneys licensed in one country to practice in a different country. Through the ABA, the United States has addressed this matter by recommending that admitting jurisdictions adopt a Foreign Legal Consultant Rule. An example of a jurisdiction following through on the suggestion is here in Indiana. Rule 5 of the Indiana Supreme Court Rules on Admission and Discipline states:

Rule 5. Foreign Legal Consultants

- (1) General Regulation as to Licensing. In its discretion, the Supreme Court may license to practice in Indiana as a foreign legal consultant, without examination, an applicant who:
 - (a) is a member in good standing of a recognized legal profession in a foreign country, the members of which are admitted to practice as attorneys or counselors at law or the equivalent and are subject to effective regulation and discipline by a duly constituted professional body or a public authority;
 - (b) for at least five of the seven years immediately preceding his or her application has been a member in good standing of such legal profession and has actually been engaged in the practice of law in the said foreign country or elsewhere substantially involving or relating to the rendering of advice or the provision of legal services concerning the law of the said foreign country;
 - (c) possesses the good moral character and general fitness requisite for a member of the bar of Indiana; and
 - (d) intends to practice as a foreign legal consultant in Indiana and to maintain an office in this State for that purpose.¹⁰

The Rule further provides:

technical assistance for these emerging democracies in modifying and restructuring laws and legal systems.

CEELI has offices in 24 countries across Central Europe, Eurasia and the Middle East. Since its founding in 1990, more than 5,000 judges, attorneys, law professors and legal specialists have contributed more than \$200 million in pro bono assistance to promoting the rule of law in the region.

CEELI Liaisons and Legal Specialists, <http://www.abanet.org/ceeli/about/mission.html> (last visited Mar. 23, 2007).

9. *Id.*

10. IND. ADMIS. DISC. R. 5(1)(a)–(d).

- (3) Reciprocal treatment of Members of the Bar of Indiana. In considering whether to license an applicant to practice as a foreign legal consultant, the Supreme Court may in its discretion take into account whether a member of the bar of Indiana would have a reasonable and practical opportunity to establish an office for the giving of legal advice to clients in the applicant's country of admission. Any member of the bar who is seeking or who has sought to establish an office in that country may request the court to consider the matter, or the Court may do so *sua sponte*.¹¹

As of 2006, thirty-one of the admitting jurisdictions in the United States have yet to adopt a rule admitting a foreign legal consultant.¹²

The Doha Round negotiations are in their final stages on the current General Agreement on Trade in Services (GATS). According to news reports this past week, negotiations broke down over the issue of agricultural subsidies.¹³ GATS addresses international trade in services, but as of yet there is no consensus on how to best implement cross-border legal practice. This omission preserves the core rules of the legal profession. The bar councils of the European community take the position that a foreign lawyer's education and practice experience must correspond to that of the country in which he or she wishes to appear.

At its August 2006 meeting, the ABA House of Delegates had before it the following resolution:

RESOLVED, That with respect to the legal services portion of the General Agreement on Trade in Services (GATS), the American Bar Association:

1. Supports the efforts of the U.S. Trade Representative to encourage the development of transparency disciplines on domestic regulation in response to Article VI(4) of the GATS requiring the development of "any necessary disciplines" to be applicable to service providers; and
2. Supports the U.S. Trade Representative's participation in the development of additional disciplines on domestic regulation that are: (a) "necessary" within the meaning of Article VI(4) of the GATS; and (b) do not unreasonably impinge on the regulatory authority of the states' highest courts of appellate jurisdiction over the legal profession in the United States.¹⁴

The Report includes the following supporting language:

The GATS Mandate Regarding Disciplines

In addition to the GATS provisions regarding access to markets, Article VI(4) provides the WTO Council on Trade in Services with the authority to establish entities to develop "any necessary disciplines" regarding certain kinds of domestic

11. IND. ADMIS. DISC. R. 5(3).

12. NATIONAL COUNCIL OF BAR EXAMINERS AND AMERICAN BAR ASSOCIATION, 2006 COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS 36 (2006).

13. See, e.g., Sungjoon Cho, *The WTO Doha Round Negotiation: Suspended Indefinitely*, AM. SOC'Y INT'L L., Sept. 5, 2006, available at <http://www.asil.org/insights/2006/09/insights060905.html>.

14. HOUSE OF DELEGATES, AM. BAR ASS'N, RECOMMENDATION REGARDING LEGAL SERVICES PORTION OF THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) (2006), available at <http://www.abanet.org/leadership/2006/annual/dailyjournal/hundredfive.doc>.

regulation measures. With regard to the development of necessary disciplines, Article VI(4) states that they are to be developed:

With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. . . . Such disciplines shall aim to ensure that such requirements are, inter alia:

- (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
- (b) not more burdensome than necessary to ensure the quality of the service;
- (c) in the case of licensing procedures, not in themselves in restriction on the supply of the service.

Once adopted by the WTO, disciplines become enforceable obligations of WTO members. This means that for legal services, adopted WTO disciplines could apply to certain U.S. state legal education requirements, bar admissions and licensing requirements and procedures, rules of professional conduct and disciplinary enforcement rules and other regulatory measures that are now and historically have been subject to adoption and enforcement by the U.S. jurisdictions' highest courts of appellate jurisdiction.

The Current Status of Disciplines Development

To date, the WTO has adopted only one set of GATS Article VI(4) disciplines. On December 14, 1998, the Council on Trade in Services approved the Disciplines on Domestic Regulation in the Accountancy Sector (Accountancy Disciplines). The Accountancy Disciplines are scheduled to take effect at the conclusion of the Doha Round. It is unknown whether the WTO will attempt the horizontal application of the Accountancy Disciplines to all other services [sic] sectors or only to some service sectors, or whether specific disciplines will be developed in relation to some professions. The latter option seems highly unlikely this late in the negotiations.

However, at the conclusion of the December 2005 Hong Kong Ministerial Conference, WTO members reached a partial agreement that they would “. . . develop disciplines on domestic regulation pursuant to the mandate under Article VI(4) of the GATS before the end of the current round of negotiations.” Because the Doha Round currently is scheduled to conclude by December 2006, negotiations are continuing and WTO members continue to meet regularly to discuss disciplines issues.

The Significance of Any WTO Disciplines Applicable to Legal Services

If any disciplines applicable to the legal profession are adopted, they could subject state Supreme Court rules relating to the regulation of the legal profession to review by the WTO dispute resolution system. For example, the concept of whether a domestic licensing requirement is “not more burdensome than necessary to ensure the quality of the service” could be subject to a WTO Dispute Resolution Panel's interpretation in the context of a case challenging a member country's rules.

The WTO dispute resolution system is triggered by one country's complaint against another WTO member country. If countries in a dispute cannot resolve their differences through consultation with each other, a WTO Dispute Resolution Panel is appointed to determine whether a violation has occurred. The Panel issues

